
Introduced by Senator Ackerman

January 27, 2005

An act to amend Sections 307, 5211, 7211, 9211, and 12351 of the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

SB 119, as introduced, Ackerman. Corporations: board meetings.

Existing law provides that an action required or permitted to be taken by the board of specified corporations may be taken without a meeting if the members of the board consent in writing to that action.

This bill would also provide that the term "consent" includes the abstention of an interested director under certain conditions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 307 of the Corporations Code is
2 amended to read:
3 307. (a) Unless otherwise provided in the articles or, subject
4 to paragraph (5) of subdivision (a) of Section 204, in the bylaws,
5 all of the following apply:
6 (1) Meetings of the board may be called by the chair of the
7 board or the president or any vice president or the secretary or
8 any two directors.
9 (2) Regular meetings of the board may be held without notice
10 if the time and place of the meetings are fixed by the bylaws or
11 the board. Special meetings of the board shall be held upon four
12 days' notice by mail or 48 hours' notice delivered personally or
13 by telephone, including a voice messaging system or by

1 electronic transmission by the corporation (Section 20). The
2 articles or bylaws may not dispense with notice of a special
3 meeting. A notice, or waiver of notice, need not specify the
4 purpose of any regular or special meeting of the board.

5 (3) Notice of a meeting need not be given to a director who
6 provides a waiver of notice or a consent to holding the meeting
7 or an approval of the minutes thereof in writing, whether before
8 or after the meeting, or who attends the meeting without
9 protesting, prior thereto or at its commencement, the lack of
10 notice to that director. These waivers, consents and approvals
11 shall be filed with the corporate records or made a part of the
12 minutes of the meeting.

13 (4) A majority of the directors present, whether or not a
14 quorum is present, may adjourn any meeting to another time and
15 place. If the meeting is adjourned for more than 24 hours, notice
16 of an adjournment to another time or place shall be given prior to
17 the time of the adjourned meeting to the directors who were not
18 present at the time of the adjournment.

19 (5) Meetings of the board may be held at a place within or
20 without the state that has been designated in the notice of the
21 meeting or, if not stated in the notice or there is no notice,
22 designated in the bylaws or by resolution of the board.

23 (6) Members of the board may participate in a meeting
24 through use of conference telephone, electronic video screen
25 communication, or electronic transmission by and to the
26 corporation (Sections 20 and 21). Participation in a meeting
27 through use of conference telephone or electronic video screen
28 communication pursuant to this subdivision constitutes presence
29 in person at that meeting as long as all members participating in
30 the meeting are able to hear one another. Participation in a
31 meeting through electronic transmission by and to the
32 corporation (other than conference telephone and electronic
33 video screen communication), pursuant to this subdivision
34 constitutes presence in person at that meeting if both of the
35 following apply:

36 (A) Each member participating in the meeting can
37 communicate with all of the other members concurrently.

38 (B) Each member is provided the means of participating in all
39 matters before the board, including, without limitation, the

capacity to propose, or to interpose an objection to, a specific action to be taken by the corporation.

(7) A majority of the authorized number of directors constitutes a quorum of the board for the transaction of business. The articles or bylaws may not provide that a quorum shall be less than one-third the authorized number of directors or less than two, whichever is larger, unless the authorized number of directors is one, in which case one director constitutes a quorum.

(8) An act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the board, subject to the provisions of Section 310 and subdivision (e) of Section 317. The articles or bylaws may not provide that a lesser vote than a majority of the directors present at a meeting is the act of the board. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

(b) An action required or permitted to be taken by the board may be taken without a meeting, if all members of the board shall individually or collectively consent in writing to that action *and if the number of members of the board serving at the time constitutes a quorum*. The written consent or consents shall be filed with the minutes of the proceedings of the board. ~~The action by written consent shall have the same force and effect as a unanimous vote of the directors~~ *For purposes of this subdivision, "consent" shall include the abstention of an interested director as described in Section 310 where board action by written consent approves a transaction in paragraph (2) of subdivision (a) or paragraph (1) of subdivision (b) of Section 310 and the director recites his or her status as an interested director. For purposes of this subdivision, a director who has signed a consent that recites his or her status as an interested director with regard to a transaction shall be deemed to be an interested director.*

(c) This section applies also to committees of the board and incorporators and action by those committees and incorporators, mutatis mutandis.

SEC. 2. Section 5211 of the Corporations Code is amended to read:

1 5211. (a) Unless otherwise provided in the articles or in the
2 bylaws, all of the following apply:

3 (1) Meetings of the board may be called by the chair of the
4 board or the president or any vice president or the secretary or
5 any two directors.

6 (2) Regular meetings of the board may be held without notice
7 if the time and place of the meetings are fixed by the bylaws or
8 the board. Special meetings of the board shall be held upon four
9 days' notice by first-class mail or 48 hours' notice delivered
10 personally or by telephone, including a voice messaging system
11 or by electronic transmission by the corporation (Section 20).
12 The articles or bylaws may not dispense with notice of a special
13 meeting. A notice, or waiver of notice, need not specify the
14 purpose of any regular or special meeting of the board.

15 (3) Notice of a meeting need not be given to a director who
16 provides a waiver of notice or consent to holding the meeting or
17 an approval of the minutes thereof in writing, whether before or
18 after the meeting, or who attends the meeting without protesting,
19 prior thereto or at its commencement, the lack of notice to that
20 director. These waivers, consents and approvals shall be filed
21 with the corporate records or made a part of the minutes of the
22 meetings.

23 (4) A majority of the directors present, whether or not a
24 quorum is present, may adjourn any meeting to another time and
25 place. If the meeting is adjourned for more than 24 hours, notice
26 of an adjournment to another time or place shall be given prior to
27 the time of the adjourned meeting to the directors who were not
28 present at the time of the adjournment.

29 (5) Meetings of the board may be held at a place within or
30 without the state that has been designated in the notice of the
31 meeting or, if not stated in the notice or there is no notice,
32 designated in the bylaws or by resolution of the board.

33 (6) Members of the board may participate in a meeting
34 through use of conference telephone, electronic video screen
35 communication or electronic transmission by and to the
36 corporation (Sections 20 and 21). Participation in a meeting
37 through use of conference telephone or electronic video screen
38 communication pursuant to this subdivision constitutes presence
39 in person at that meeting as long as all members participating in
40 the meeting are able to hear one another. Participation in a

meeting through use of electronic transmission by and to the corporation, other than conference telephone and electronic video screen communication, pursuant to this subdivision constitutes presence in person at that meeting if both of the following apply:

(A) Each member participating in the meeting can communicate with all of the other members concurrently.

(B) Each member is provided the means of participating in all matters before the board, including, without limitation, the capacity to propose, or to interpose an objection to, a specific action to be taken by the corporation.

(7) A majority of the number of directors authorized in the articles or bylaws constitutes a quorum of the board for the transaction of business. The articles or bylaws may not provide that a quorum shall be less than one-fifth the number of directors authorized in the articles or bylaws, or less than two, whichever is larger, unless the number of directors authorized in the articles or bylaws is one, in which case one director constitutes a quorum.

(8) Subject to the provisions of Sections 5212, 5233, 5234, 5235, and subdivision (e) of Section 5238, an act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the board. The articles or bylaws may not provide that a lesser vote than a majority of the directors present at a meeting is the act of the board. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting, or a greater number required by this division, the articles or bylaws.

(b) An action required or permitted to be taken by the board may be taken without a meeting, if all members of the board shall individually or collectively consent in writing to that action *and if the number of members of the board serving at the time constitutes a quorum*. The written consent or consents shall be filed with the minutes of the proceedings of the board. ~~The action by written consent shall have the same force and effect as the unanimous vote of the directors. For the purposes of this section only, "all members of the board" does not include an "interested director" as defined in Section 5233. For purposes of this subdivision, "consent" shall include the abstention of an~~

1 *interested director as defined in Section 5233 where board action*
2 *by written consent approves a transaction described in*
3 *subparagraph (C) of paragraph 2 of subdivision (d) or*
4 *subparagraph (C) of paragraph (3) of subdivision (d) of Section*
5 *5233 and the director recites his or her status as an interested*
6 *director. For purposes of this subdivision, a director who has*
7 *signed a consent that recites his or her status as an interested*
8 *director with regard to a transaction shall be deemed to be an*
9 *interested director.*

10 (c) The provisions of this section apply also to incorporators,
11 to committees of the board, and to action by those incorporators
12 or committees mutatis mutandis.

13 SEC. 3. Section 7211 of the Corporations Code is amended to
14 read:

15 7211. (a) Unless otherwise provided in the articles or in the
16 bylaws, all of the following apply:

17 (1) Meetings of the board may be called by the chair of the
18 board or the president or any vice president or the secretary or
19 any two directors.

20 (2) Regular meetings of the board may be held without notice
21 if the time and place of the meetings are fixed by the bylaws or
22 the board. Special meetings of the board shall be held upon four
23 days' notice by first-class mail or 48 hours' notice delivered
24 personally or by telephone, including a voice messaging system
25 or by electronic transmission by the corporation (Section 20).
26 The articles or bylaws may not dispense with notice of a special
27 meeting. A notice, or waiver of notice, need not specify the
28 purpose of any regular or special meeting of the board.

29 (3) Notice of a meeting need not be given to a director who
30 provided a waiver of notice or consent to holding the meeting or
31 an approval of the minutes thereof in writing, whether before or
32 after the meeting, or who attends the meeting without protesting,
33 prior thereto or at its commencement, the lack of notice to that
34 director. These waivers, consents and approvals shall be filed
35 with the corporate records or made a part of the minutes of the
36 meetings.

37 (4) A majority of the directors present, whether or not a
38 quorum is present, may adjourn any meeting to another time and
39 place. If the meeting is adjourned for more than 24 hours, notice
40 of an adjournment to another time or place shall be given prior to

1 the time of the adjourned meeting to the directors who were not
2 present at the time of the adjournment.

3 (5) Meetings of the board may be held at a place within or
4 without the state that has been designated in the notice of the
5 meeting or, if not stated in the notice or if there is no notice,
6 designated in the bylaws or by resolution of the board.

7 (6) Members of the board may participate in a meeting
8 through use of conference telephone, electronic video screen
9 communication, or electronic transmission by and to the
10 corporation (Sections 20 and 21). Participation in a meeting
11 through use of conference telephone or electronic video screen
12 communication pursuant to this subdivision constitutes presence
13 in person at that meeting as long as all members participating in
14 the meeting are able to hear one another. Participation in a
15 meeting through use of electronic transmission by and to the
16 corporation, other than conference telephone and electronic video
17 screen communication, pursuant to this subdivision constitutes
18 presence in person at that meeting if both of the following apply:

19 (A) Each member participating in the meeting can
20 communicate with all of the other members concurrently.

21 (B) Each member is provided the means of participating in all
22 matters before the board, including, without limitation, the
23 capacity to propose, or to interpose an objection to, a specific
24 action to be taken by the corporation.

25 (7) A majority of the number of directors authorized in the
26 articles or bylaws constitutes a quorum of the board for the
27 transaction of business. The articles or bylaws may not provide
28 that a quorum shall be less than one-fifth the number of directors
29 authorized in the articles or bylaws, or less than two, whichever
30 is larger, unless the number of directors authorized in the articles
31 or bylaws is one, in which case one director constitutes a
32 quorum.

33 (8) Subject to the provisions of Sections 7212, 7233, 7234,
34 and subdivision (e) of Section 7237 and Section 5233, insofar as
35 it is made applicable pursuant to Section 7238, an act or decision
36 done or made by a majority of the directors present at a meeting
37 duly held at which a quorum is present is the act of the board.
38 The articles or bylaws may not provide that a lesser vote than a
39 majority of the directors present at a meeting is the act of the
40 board. A meeting at which a quorum is initially present may

1 continue to transact business notwithstanding the withdrawal of
2 directors, if any action taken is approved by at least a majority of
3 the required quorum for that meeting, or a greater number
4 required by this division, the articles or bylaws.

5 (b) An action required or permitted to be taken by the board
6 may be taken without a meeting, if all members of the board shall
7 individually or collectively consent in writing to that action *and*
8 *if the number of members of the board serving at the time*
9 *constitutes a quorum.* The written consent or consents shall be
10 filed with the minutes of the proceedings of the board. ~~The action~~
11 ~~by written consent shall have the same force and effect as a~~
12 ~~unanimous vote of the directors. For the purposes of this section~~
13 ~~only, “all members of the board” does not include an “interested~~
14 ~~director” as defined in Section 5233, insofar as it is made~~
15 ~~applicable pursuant to Section 7238~~ *For purposes of this*
16 *subdivision, “consent” shall include the abstention of an*
17 *interested director as defined in Section 7233 where board action*
18 *by written consent approves a transaction described in*
19 *paragraph (2) of subdivision (a) or paragraph (1) of subdivision*
20 *(b) of Section 7233 and the director recites his or her status as*
21 *an interested director. For purposes of this subdivision, a*
22 *director who has signed a consent that recites his or her status as*
23 *an interested director with regard to a transaction shall be*
24 *deemed to be an interested director.*

25 (c) This section applies also to incorporators, to committees of
26 the board, and to action by those incorporators or committees
27 mutatis mutandis.

28 SEC. 4. Section 9211 of the Corporations Code is amended to
29 read:

30 9211. (a) Unless otherwise provided in the articles or in the
31 bylaws, all of the following apply:

32 (1) Meetings of the board may be called by the chair of the
33 board or the president or any vice president or the secretary or
34 any two directors.

35 (2) Regular meetings of the board may be held without notice
36 if the time and place of the meetings are fixed by the bylaws or
37 the board. Special meetings of the board shall be held upon four
38 days' notice by first-class mail or 48 hours' notice delivered
39 personally or by telephone, including a voice messaging system
40 or by electronic transmission by a corporation (Section 20). The

1 articles or bylaws may not dispense with notice of a special
2 meeting. A notice, or waiver of notice, need not specify the
3 purpose of any regular or special meeting of the board.

4 (3) Notice of a meeting need not be given to a director who
5 provided a waiver of notice or consent to holding the meeting or
6 an approval of the minutes thereof in writing, whether before or
7 after the meeting, or who attends the meeting without protesting,
8 prior thereto or at its commencement, the lack of notice to that
9 director. These waivers, consents and approvals shall be filed
10 with the corporate records or made a part of the minutes of the
11 meetings.

12 (4) A majority of the directors present, whether or not a
13 quorum is present, may adjourn any meeting to another time and
14 place.

15 (5) Meetings of the board may be held at a place within or
16 without the state that has been designated in the notice of the
17 meeting or, if not stated in the notice or there is no notice,
18 designated in the bylaws or by resolution of the board.

19 (6) Members of the board may participate in a meeting
20 through use of conference telephone, electronic video screen
21 communication, or electronic transmission by and to the
22 corporation. Participation in a meeting through use of conference
23 telephone or electronic video screen communication pursuant to
24 this subdivision constitutes presence in person at that meeting as
25 long as all members participating in the meeting are able to hear
26 one another. Participation in a meeting through use of electronic
27 transmission by and to the corporation, other than conference
28 telephone and electronic video screen communication pursuant to
29 this subdivision constitutes presence in person at that meeting, if
30 both of the following apply:

31 (A) Each member participating in the meeting can
32 communicate with all of the other members concurrently.

33 (B) Each member is provided the means of participating in all
34 matters before the board, including, without limitation, the
35 capacity to propose, or to interpose an objection to, a specific
36 action to be taken by the corporation.

37 (7) A majority of the number of directors authorized in the
38 articles or bylaws constitutes a quorum of the board for the
39 transaction of business.

1 (8) An act or decision done or made by a majority of the
2 directors present at a meeting duly held at which a quorum is
3 present is the act of the board. The articles or bylaws may not
4 provide that a lesser vote than a majority of the directors present
5 at a meeting is the act of the board. A meeting at which a quorum
6 is initially present may continue to transact business
7 notwithstanding the withdrawal of directors, if any action taken
8 is approved by at least a majority of the required quorum for that
9 meeting, or a greater number as is required by this division, the
10 articles or bylaws.

11 (b) An action required or permitted to be taken by the board
12 may be taken without a meeting, if all members of the board shall
13 individually or collectively consent in writing to that action *and*
14 *if the number of members serving at the time constitutes a*
15 *quorum*. The written consent or consents shall be filed with the
16 minutes of the proceedings of the board. ~~The action by written~~
17 ~~consent shall have the same force and effect as the unanimous~~
18 ~~vote of the directors~~ *For purposes of this subdivision, "consent"*
19 *shall include the abstention of an interested director as defined*
20 *in Section 9243 where board action by written consent approves*
21 *a transaction described in subparagraph (C) of paragraph (3) of*
22 *subdivision (d) or subparagraph (C) of paragraph (4) of*
23 *subdivision (d) of Section 9243 and the director recites his or her*
24 *status as an interested director. For purposes of this subdivision,*
25 *a director who has signed a consent that recites his or her status*
26 *as an interested director with regard to a transaction shall be*
27 *deemed to be an interested director.*

28 (c) This section applies also to incorporators, to committees of
29 the board, and to action by those incorporators or committees
30 mutatis mutandis.

31 SEC. 5. Section 12351 of the Corporations Code is amended
32 to read:

33 12351. (a) Unless otherwise provided in the articles or in the
34 bylaws:

35 (1) Meetings of the board may be called by the chairman of
36 the board or the president or any vice president or the secretary
37 or any two directors.

38 (2) Regular meetings of the board may be held without notice
39 if the time and place of such meetings are fixed by the bylaws or
40 the board. Special meetings of the board shall be held upon four

1 days' notice by first-class mail or 48 hours' notice delivered
2 personally or by telephone, including a voice messaging system
3 or by electronic transmission by the corporation (Section 20).
4 The articles or bylaws may not dispense with notice of a special
5 meeting. A notice, or waiver of notice, need not specify the
6 purpose of any regular or special meeting of the board.

7 (3) Notice of a meeting need not be given to any director who
8 provides a waiver of notice or consent to holding the meeting or
9 an approval of the minutes thereof in writing, whether before or
10 after the meeting, or who attends the meeting without protesting,
11 prior thereto or at its commencement, the lack of notice to such
12 director. All such waivers, consents and approvals shall be filed
13 with the corporate records or made a part of the minutes of the
14 meetings.

15 (4) A majority of the directors present, whether or not a
16 quorum is present, may adjourn any meeting to another time and
17 place. If the meeting is adjourned for more than 24 hours, notice
18 of any adjournment to another time or place shall be given prior
19 to the time of the adjourned meeting to the directors who were
20 not present at the time of the adjournment.

21 (5) Meetings of the board may be held at any place within or
22 without the state which has been designated in the notice of the
23 meeting or, if not stated in the notice or if there is no notice,
24 designated in the bylaws or by resolution of the board.

25 (6) Members of the board may participate in a meeting
26 through use of conference telephone, electronic video screen
27 communication, or electronic transmission by and to the
28 corporation (Sections 20 and 21). Participation in a meeting
29 through use of conference telephone or electronic video screen
30 communication pursuant to this subdivision constitutes presence
31 in person at that meeting as long as all members participating in
32 the meeting are able to hear one another. Participation in a
33 meeting through use of electronic transmission by and to the
34 corporation, other than conference telephone and electronic video
35 screen communication pursuant to this subdivision constitutes
36 presence in person at that meeting if both of the following apply:

37 (A) Each member participating in the meeting can
38 communicate with all of the other members concurrently.

39 (B) Each member is provided the means of participating in all
40 matters before the board, including, without limitation, the

1 capacity to propose, or to interpose an objection to, a specific
2 action to be taken by the corporation.

3 (7) A majority of the number of directors authorized in the
4 articles or bylaws constitutes a quorum of the board for the
5 transaction of business. The articles or bylaws may not provide
6 that a quorum shall be less than one-fifth the number of directors
7 authorized in the articles or bylaws, or less than two, whichever
8 is larger.

9 (8) Subject to the provisions of Sections 12352, 12373, 12374
10 and subdivision (e) of Section 12377, every act or decision done
11 or made by a majority of the directors present at a meeting duly
12 held at which a quorum is present is the act of the board. The
13 articles or bylaws may not provide that a lesser vote than a
14 majority of the directors present at a meeting is the act of the
15 board. A meeting at which a quorum is initially present may
16 continue to transact business notwithstanding the withdrawal of
17 directors, if any action taken is approved by at least a majority of
18 the required quorum for such meeting, or such greater number as
19 is required by this division, the articles or bylaws.

20 (b) Any action required or permitted to be taken by the board
21 may be taken without a meeting, if all members of the board shall
22 individually or collectively consent in writing to such action *and*
23 *if the number of members of the board serving at the time*
24 *constitutes a quorum.* Such written consent or consents shall be
25 filed with the minutes of the proceedings of the board. ~~Such~~
26 ~~action by written consent shall have the same force and effect as~~
27 ~~a unanimous vote of such directors~~ *For purposes of this*
28 *subdivision, “consent” shall include the abstention of an*
29 *interested director as described in Section 12373 where board*
30 *action by written consent approves a transaction described in*
31 *paragraph (2) of subdivision (a) or paragraph (1) of subdivision*
32 *(b) of Section 12373 and the director recites his or her status as*
33 *an interested director. For purposes of this subdivision, a*
34 *director who has signed a consent that recites his or her status as*
35 *an interested director with regard to a transaction shall be*
36 *deemed to be an interested director.*

37 (c) The provisions of this section apply also to incorporators,
38 to committees of the board, and to action by such incorporators
39 or such committees mutatis mutandis.

1 SEC. 6. It is the intent of the Legislature that the provisions of
2 this act that add the language “and if the number of members of
3 the board serving at the time constitutes a quorum” do not
4 constitute a change of law but instead make a clarification to
5 guide directors. It is also the intent of the Legislature that the
6 provisions of this act that delete the sentence “The action by
7 written consent shall have the same force and effect as a
8 unanimous vote of the directors” do not constitute a change of
9 law but instead delete superfluous language addressed by the
10 respective sections of law.

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